### 法律文献检索报告

### 我国新刑诉中专家辅助人制度初探

### ——以美国联邦证据规则为鉴

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### 1引言

2012 年我国新刑诉第一次设立专家辅助人制度,对鉴定意见的质证提供技术上的支持。但专家辅助人在刑诉辩护中所充当的角色定位和其提出的质证意见效力,仍存在着不确定性。由于此制度是借鉴美国专家证人的制度发展而来,因此本文将从美国相关制度入手,探讨我国专家辅助人的意见效力和其在刑事辩护中的诉讼地位。

在美国的司法体系中,专家证人不经存在于刑事诉讼中,在联邦的民事诉讼程序中也有相应的专家证人规则,通过对于美国司法体系中专家证人制度的分析和典型案例的研究,可以为中国司法程序中相关制度提出更多具有现实意义的规定及理论。

关键词:专家辅助人(Expert Assistant)专家证人(Expert Witness) 鉴定意见(Expert Testimony/opinion) 可接受性/可采纳(Admissibility)专家证人的角色(Role of Expert Witness)

### 2阅读对象

本检索报告主要通过对美国已有专家证人制度的研究以及实际应用的分析 对该制度进行探索,同时在研究国内相关的专家辅助人制度的现状的基础提出国 内刑事诉讼中专家辅助人制度的发展与完善建议。本报告适合对以研究专家证人 制度为主要领域的人员进行阅读。由于国内相关制度的发展和应用都在起步阶段, 所以检索内容主要来自外文资料,且立足于美国立法下。

### 3外文资源

### 3.1 成文法

成文法检索通过直接在 Westlaw 的 Federal Rules 的数据库中通过 Table of Contents 寻找有关专家证人制度的规定。 再通过 Westlaw 对于该成文法的说明检

索相关成文法。美国立法中民事与刑事均通用联邦证据,因此主要专家证人规则来自联邦证据规则。检索结果按照专家证人制度的逻辑顺序进行排列,较为重要的条款详细列明。

### 3.1.1 Rule 104. Preliminary Questions, 28 U.S.C.A.

#### (West 2014)

(a) In General. The court must decide any preliminary question about whether a witness is qualified, a privilege exists, or evidence is admissible. In so deciding, the court is not bound by evidence rules, except those on privilege.

.....

(e) Evidence Relevant to Weight and Credibility. This rule does not limit a party's right to introduce before the jury evidence that is relevant to the weight or credibility of other evidence.

该成文法规定了要求专家证人作证一方有义务保证专家证人证言的可接受性,可以成为专家证人意见提供方的举证责任,或是专家证人证言合法的先决条件。

### 3.1.2 Rule 702. Testimony by Expert Witnesses, 28

#### U.S.C.A.

A witness who is qualified as an expert by knowledge, skill, experience, training, or education may testify in the form of an opinion or otherwise if:

- (a) the expert's scientific, technical, or other specialized knowledge will help the trier of fact to understand the evidence or to determine a fact in issue;
  - (b) the testimony is based on sufficient facts or data;
  - (c) the testimony is the product of reliable principles and methods; and
- (d) the expert has reliably applied the principles and methods to the facts of the case.

专家证人证言的合法性需要满足上述4个标准,这个4个标准既有技术标准也有尽责标准,同时还要求专家证人证人具有一定的公众可接受性。

### 3.1.3 Rule 703. Bases of an Expert's Opinion Testimony,

### 28 U.S.C.A.

An expert may base an opinion on facts or data in the case that the expert has been made aware of or personally observed. If experts in the particular field would reasonably rely on those kinds of facts or data in forming an opinion on the subject, they need not be admissible for the opinion to be admitted. But if the facts or data would otherwise be inadmissible, the proponent of the opinion may disclose them to

the jury only if their probative value in helping the jury evaluate the opinion substantially outweighs their prejudicial effect.

该条文对于已由专家证人验证的非案件证言的法庭采信做了具体规定。

### 3.1.4 Rule 403. Excluding Relevant Evidence for

### Prejudice, Confusion, Waste of Time, or Other Reasons

The court may exclude relevant evidence if its probative value is substantially outweighed by a danger of one or more of the following: unfair prejudice, confusing the issues, misleading the jury, undue delay, wasting time, or needlessly presenting cumulative evidence.

该条款是联邦证据规则中基于各种理由排除相关证据的条款,同样适用于专 家证人制度,是专家证人证言合法排除的法律依据。

### 3.1.5 Rule 706. Court-Appointed Expert Witnesses

- (a) Appointment Process. On a party's motion or on its own, the court may order the parties to show cause why expert witnesses should not be appointed and may ask the parties to submit nominations. The court may appoint any expert that the parties agree on and any of its own choosing. But the court may only appoint someone who consents to act.
- (b) Expert's Role. The court must inform the expert of the expert's duties. The court may do so in writing and have a copy filed with the clerk or may do so orally at a conference in which the parties have an opportunity to participate. The expert:
  - (1) must advise the parties of any findings the expert makes;
  - (2) may be deposed by any party;
  - (3) may be called to testify by the court or any party; and
- (4) may be cross-examined by any party, including the party that called the expert.
- (c) Compensation. The expert is entitled to a reasonable compensation, as set by the court. The compensation is payable as follows:
- (1) in a criminal case or in a civil case involving just compensation under the Fifth Amendment, from any funds that are provided by law; and
- (2) in any other civil case, by the parties in the proportion and at the time that the court directs--and the compensation is then charged like other costs.
- (d) Disclosing the Appointment to the Jury. The court may authorize disclosure to the jury that the court appointed the expert.
- (e) Parties' Choice of Their Own Experts. This rule does not limit a party in calling its own experts.

该条款非常详细地规定了专家证人的法庭指定程度,同时将专家证人的法庭

角色在条款中加以明确,明确专家证人责任以及相关补偿事项,同时规定当事人 仍然有权要求自己选定的专家证人作证。

### 3.2 相关判例

案例检索包括两种方式,一是以联邦证据规则具体条款为关键词,搜索涉及专家证人制度条款的案例,再是 Westlaw - USCA – Federal Rule of Evidence 中相关法律的 Notes of decisions 中的案例链接。

### 3.2.1 William DAUBERT, et ux., etc., et al., Petitioners, v. MERRELL DOW PHARMACEUTICALS, INC., 509 U.S. 579 (1993)

Infants and their guardians ad litem sued pharmaceutical company to recover for limb reduction birth defects allegedly sustained as result of mothers' ingestion of antinausea drug Bendectin. The United States District Court for the Southern District of California, 727 F.Supp. 570, granted company's motion for summary judgment, and plaintiffs appealed. The Court of Appeals, 951 F.2d 1128, affirmed. Plaintiffs filed petition for writ of certiorari, which was granted. The Supreme Court, Justice Blackmun, held that: (1) "general acceptance" is not necessary precondition to admissibility of scientific evidence under Federal Rules of Evidence, and (2) Rules assign to trial judge the task of ensuring that expert's testimony both rests on reliable foundation and is relevant to task at hand.

本案确立了法官对专家证人证言的审查义务,同时提出专家证人证言独立性的要求。 $^1$ 

# 3.2.2 Kumho Tire Co. v. Carmichael, 119 S.Ct. 1167,1176 (1999).

Plaintiffs brought products liability action against tire manufacturer and tire distributor for injuries sustained when right rear tire on vehicle failed. The United States District Court for the Southern District of Alabama, No. 93–0860–CB–S, 923 F.Supp. 1514, Charles R. Butler, J., granted summary judgment for defendants, and plaintiffs appealed. The Court of Appeals for the Eleventh Circuit, 131 F.3d 1433, reversed and remanded. Defendants filed application for writ of certiorari. The Supreme Court, Justice Breyer, held that: (1) Daubert's "gatekeeping" obligation, requiring an inquiry into both relevance and reliability, applies not only to "scientific" testimony, but to all expert testimony; (2) when assessing reliability of

<sup>&</sup>quot;One very significant fact to be considered is whether the experts are proposing to testify about matters growing naturally and directly out of research they have conducted independent of the litigation, or whether they have developed their opinions expressly for purposes of testifying."

engineering expert's testimony, trial court may consider the Daubert factors to the extent relevant; and (3) trial court did not abuse its discretion in its application of Daubert to exclude tire failure analyst's expert testimony that particular tire failed due to manufacturing or design defect.

这两个案例的判决确立了美国专家证人规定的对法官的"守门员"义务要求,要求法官对专家证人证言的可接受有义务进行审查,这种义务适用于所有专家证人证言。基于以上两个判例,美国专家证人规定在 2000 年将第 702 条进行修改,以符合判例。但是这些案例中所确定的对于专家证人证言可接受性的检验因素并不能适用于所有案例,由此在以下几个判例中形成了较为充分的标准:

### 3.2.3 Claar v. Burlington N.R.R., 29 F.3d 499 (9th Cir.

### 1994)

"The trial judge must ensure that any and all scientific testimony or evidence admitted is not only relevant, but reliable. The primary locus of this obligation is Rule 702."

### 3.2.4 Ambrosini v. Labarraque, 101 F.3d 129 (D.C. Cir. 1996).

The Court of Appeals, Rogers, Circuit Judge, held that expert testimony of epidemiologist and teratologist which was offered by plaintiff satisfied Daubert standard and was admissible.<sup>2</sup>

以上两个判例要求专家证人证言的解释要"明显"。

### 3.2.5 General Elec. Co. v. Joiner, 522 U.S. 136, 146 (1997).

"But nothing in either Daubert or the Federal Rules of Evidence requires a district court to admit opinion evidence that is connected to existing data only by the ipse dixit of the expert. A court may conclude that there is simply too great an analytical gap between the data and the opinion proffered."

该判例要求专家证人证言具有合理性,而非基于武断的判断。

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Testimony of epidemiologist that prescription drug taken by mother during her pregnancy could have caused birth defects from which child suffered satisfied Daubert standard for admission of scientific testimony and was admissible in products liability action against manufacturer of drug even though epidemiologist offered no testimony as to relative risk between exposed and unexposed populations of defects from which child suffered; testimony was not based on methodology which was unconventional or improper, and could aid jury's resolution of claims and thus was sufficiently tied to facts at issue.

# 3.2.6 Moore v. Ashland Chemical, Inc., 151 F.3d 269 (5th Cir. 1998);

"Five non-exclusive and flexible factors to be considered by district court in deciding whether to admit expert testimony include whether expert's theory can be or has been tested, whether theory has been subject to peer review and publication, known or potential rate of error of technique or theory when applied, existence and maintenance of standards and controls, and degree to which technique or theory has been generally accepted in scientific community"

### 3.2.7 Sterling v. Velsicol Chem. Corp., 855 F.2d 1188 (6th Cir. 1988).

"A physician's testimony that resident's environmental exposure to chemical, which leached into drinking water from nearby chemical waste burial site, was reasonable and probable cause for resident's kidney cancer was sufficient medical proof that injuries were caused by ingesting contaminated water."

上述两个判例均对专家证人作证之领域是否能够以其研究得出可靠结论做了一定要求。

# 3.2.8 Sheehan v. Daily Racing Form, Inc., 104 F.3d 940,942 (7th Cir. 1997)

Equally without evidentiary significance is the statistical analysis of the list of 17; indeed, the analysis was not even admissible under the standard of Daubert v. Merrell Dow Pharmaceuticals, Inc., 509 U.S. 579, 113 S.Ct. 2786, 125 L.Ed.2d 469 (1993), governing the admissibility of expert testimony, which requires the district judge to satisfy himself that the expert is being as careful as he would be in his regular professional work outside his paid litigation consulting.

### 3.2.9 Kumho Tire Co. v. Carmichael, 119 S.Ct. 1167, 1176 (1999).

To say this is not to deny the importance of Daubert's gatekeeping requirement. ..... Rather, we conclude that the trial judge must have considerable leeway in deciding in a particular case how to go about determining whether particular expert testimony is reliable. That is to say, a trial court should consider the specific factors identified in Daubert where they are reasonable measures of the reliability of expert testimony.

上述两个判例确立了对专家证人尽责义务要求。

### 3.3 二次资源

### 3.3.1 专著

专著的搜索主要以"Federal Rules of Evidence"; "Expert Witness"为关键词,在 浙大图书馆检索并进行初步阅读。

### 3.3.1.1 Michael H. Graham, Federal Rules of

### Evidence(2011)

该书简要介绍了专家证人制度在美国的发展,美国专家证人制度的标准由于过于原则化,并在民事、刑事中一并适用,所以造成了在实际案件中由于案件性质与内容的不同专家证人的作证能力相差大,专家证人证言可接受性地等问题,一直以来专家证人证言在具体案例中的可接受性是美国在相关领域研究中的重点。

### 3.3.1.2 Federal Rules of Evidence, 3d, Paul Rothstein, Clark Boardman Callaghan

该书对于专家证人的角色和专家证人证言的可接受性在已有判例的基础上进行了简要的介绍和分析。

### 3.3.1.3 Expert Testimony: Rule 702 (Litigator

### Series), LandMark Publications (Author)

该书涵盖与联邦证据规则 702 条有关的 121 个案件,通过案例比较分析,比较客观的描述专家证人制度在美国的应用和发展。

### 3.3.2 American Law Report

主要检索关键词 "admissibility"; "expert /5 evidence"; "expert /5 testify"等。 85 ALR 5th 187, Admissibility of Expert and Opinion Evidence as to Cause or Origin of Fire in Criminal Prosecution for Arson or Related Offense--Modern Cases.

该评论就故意纵火案中专家证人证言可接受性标准进行讨论,尽管 Arson 调查有很高的可信度,但是作为专家证人证言仅对案件有证明力,而不能仅凭此调查方法定案。

<u>85 ALR 5th 595</u>, Admissibility of Expert Testimony on Child Sexual Abuse Accommodation Syndrome (CSAAS) in Criminal Case.

该评论论述第三方组织的专家证人证言在形式案件中的可接受性,出去与儿童性虐待相关性很强的哪些因素,其他因素可以成为第三组织专家证人证言可信度的审查标准。

104 ALR 5th 503, Admissibility and Effect of Evidence of Electromagnetic Fields Generated by Power Lines, or Public Perception Thereof, in Action to Value Land or to Recover for Personal Injury or Property Damage

该评论在民事侵权案件中的人身损害赔偿的专家证人证言的可接受上进行了一定的研究,在刑事案件中确定人身损害的专家证人证言可接受性可以在一定程度上借鉴。

183 ALR, Fed. 333, Admissibility of Handwriting Expert's Testimony in Federal Criminal Case.

该评论研究是内容是刑事诉讼中有关字迹的专家证人证言的可接受性研究, 字迹在刑事诉讼中很有可能对其他书证的证明力造成影响,本文侧重于对证 明证据的"专家证人证言"的可接受性研究。

#### 3.3.3 Law Review Articles

(1) Scott Woller, RETHINKING THE ROLE OF EXPERT TESTIMONY REGARDING THE RELIABILITY OF EYEWITNESS IDENTIFICATIONS IN NEW YORK, 48 NYLSLR 323(2004).

该文章介绍到了,专家证人证言在辨识证据的判定中的作用,专家证人证言除了有可能涉及到案件的实体问题,也有可能涉及到其他与案件相关的程序问题,对于专家证人证言的角色增加了其作用范围。

(2) Dean A. Morande, A CLASS OF THEIR OWN: MODEL PROCEDURAL RULES AND EVIDENTIARY EVALUATION OF COMPUTER-GENERATED "ANIMATIONS", 61 UMIALR 1069(2007)

该文章对于计算机生产图像技术在证据评估中的地位进行了一定谈论,在 计算机科技非常发达的今天,除了具有非常高资格的专家证人,专业性和准确性 更强的科技技术是否能够在一定程度上与专家证人起到一定的作用,是非常值得 探讨的问题。

(3) Miriam F. Miquelon-Weismann, Trend and Issue in Scientific Evidence, 1 S. New Eng. Roundtable Symp. L.J. 1(2006).

该文介绍了科学性证据在专家证人制度下的发展和一些展望,认为科学性证据在今后的法庭实务中会有非常大的作用。

### 4中文资料

### 4.1 一次资源

### 4.1.1 法律

关于专家辅助人的成文规定,由于之前就了解到法律规定中适用的是"有专门知识的人",所以在北大法宝的法律法规里通过检索关键字"有专门知识的人&刑事诉讼"查找到:

(1) 我国法律《中华人民共和国刑事诉讼法(2012 修正)》第一百九十二条(【法宝引证码】 CLI.1.169667)

第一百九十二条 法庭审理过程中,当事人和辩护人、诉讼代理人有权申请通知新的证人到庭,调取新的物证,申请重新鉴定或者勘验。

公诉人、当事人和辩护人、诉讼代理人可以申请法庭通知有专门知识的人出 庭,就鉴定人作出的鉴定意见提出意见。

法庭对于上述申请,应当作出是否同意的决定。、

第二款规定的有专门知识的人出庭,适用鉴定人的有关规定。

### 4.1.2 司法解释

最高人民法院关于适用《中华人民共和国刑事诉讼法》的解释第二百一十六条和二百二百一十七条(【法宝引证码】 CLI.3.191558)

第二百一十六条 证人、鉴定人、有专门知识的人发问应当分别进行。证人、鉴定人、有专门知识的人经控辩双方发问或者审判人员询问后,审判长应当告知 其退庭。

证人、鉴定人、有专门知识的人不得旁听对本案的审理。

第二百一十七条 公诉人、当事人及其辩护人、诉讼代理人申请法庭通知有专门知识的人出庭,就鉴定意见提出意见的,应当说明理由。法庭认为有必要的,应当通知有专门知识的人出庭。

申请有专门知识的人出庭,不得超过二人。有多种类鉴定意见的,可以相应增加人数。

有专门知识的人出庭,适用鉴定人出庭的有关规定。

### 4.1.3 案例

北大法宝中,搜索关键词"有专门知识的人"查询到 26 个相关刑事案例。 在这 26 个刑事案例中,多数为公诉方对被害人的人身伤害伤势的鉴定,有专门知识的人被作为鉴定者的诉讼身份,其作出的鉴定意见也作为间接证据被控方使用来阐明案件的客观事实。但是有 4 个比较有代表的典型案例如下:

(1)曹冬才被控故意伤害宣告无罪案(证据)(1997)益中刑终字第1号(【法宝引证码】CLI.C.229397)

本案中,自诉人段庆中的伤情法医鉴定是认定被告人曹冬才是否构成犯罪的 关键性的证据。该鉴定是自诉人段庆中凭其丈夫所在单位的证明自行去鉴定的, 不是司法机关指派、聘请的有专门知识的人作出的,因此,该鉴定结论不具有合 法来源。

(2) 唐胜刚破坏交通设施案(2006) 长铁刑初字第 122 号(【法宝引证码】 CLI.C.1751976)

此案存在的争议问题是铁路安监部门出具的证明材料能否作为定案的依据, 也就引起了对鉴定主体资格的判断。我国刑事诉讼领域的司法鉴定的主体以鉴定 人鉴定为一般原则,鉴定机构鉴定为例外。在破坏铁轨、火车等破坏交通设施、 工具等案件中,铁路安监部门出具的材料实质上系一种书证。被害单位出具书证, 并未违反法律的禁止性规定。如果查证该书证属实的,可以作为定案的依据。

(3) 李某非法占用农用地案(2013)永刑初字第 86 号(【法宝引证码】 CLI.C.1501038)

本案中,占用林地面积的鉴定属于对案件中的专门性问题鉴定,永兴县林业局林业调查规划设计队的工程师具有对破坏森林资源的案件进行界定的法定职权和资质,应属于对案件中的专门性问题聘请有专门知识的人进行鉴定,在本案庭前会议中,辩护人没有对此鉴定意见申请非法证据排除,因此认为此鉴定意见可以作为本案定罪量刑的参考,法院认为辩护人提出此鉴定书不能作为定案依据的理由不能成立。

(4)邬某某破坏计算机信息系统案(2013)徐刑初字第 281 号(【法宝引证码】 CLI.C.1994722)

此案中,公诉机关当庭出示了相关书证、证人证言、鉴定意见及搜查笔录等证据材料,并申请法庭通知有专门知识的人出庭,就鉴定意见提出意见,对这种高技术违反犯罪事实的认定起了重要作用。

### 4.2 二次资源

### 4.2.1 法学期刊

(1) 郭华:《切实保障刑事诉讼法中司法鉴定条款的实施》,《法学》, 2012 年第6期。

主要是就保障修改的内容与未触及问题的协调,促进新增专门知识的人出庭与证据制度间的融合以及修改后的问题不因歧义而影响其在规范意义上的运行。刑事诉讼中有专门知识的人出庭仅限于"就鉴定人作出的鉴定意见提出意见",而不是宽泛地"就案件的专门性问题进行说明",也没有达到学者所言的可以"对案件中的某些专业问题发表意见"的地步,其适用范围、条件与程序相对严格。程序上,其出庭也不应当适用鉴定人回避的规定,其提出的意见仅是质疑鉴定意见的依据或者理由,回避等程序性规定偏离了该制度的本质功能。其出庭质疑鉴定意见虽然需要尊重科学,但他们不可能提出不利于申请人的意见,也不可能具有鉴定人的中立地位,故不应适用回避制度。

(2) 高洁:《论专家辅助人意见》,《北方法学》,2013年第6期。

从证据法的角度看来,分析了专家辅助人意见具有言词证据、意见证据、弹 劾证据的多重属性,因此意见的内容应围绕鉴定意见中的专门性问题。 (3) 徐高燕:《鉴定结论之修改与专家辅助人之出现》, 《湖北警官学院学报》, 2013 年第 5 期。

文章主要是针对新刑诉修改的两个方面进行分析,一是将鉴定结论改为鉴定意见,第二个就是专家辅助人的新规定。文中提到,将鉴定结论"修改为"鉴定意见"有助于我们清醒地认识到"鉴定结论"作为刑事诉讼中法定证据的一种,它也必须经过法庭调查和控诉双方的质证才能被采纳,而不是因为其带着"专业"、"科学"的面纱就为其采纳大开其道。这其实也侧面对比出专家辅助人的意见相对于证人的证言,效力要低一些。文章也对专家辅助人和美国的的专家证人做了简要的联系和区别。

(4) 安文霞:《出庭作证制度研究》,《西部法学评论》,2012年第5期。

文章指出出庭作证主体在诉讼权利、义务、作证方式、制裁措施与出庭例外方式上表现出较大的差异,专家证人、司法鉴定人员在内的普通证人则属于私权主体。从作证内容看,可以分为专业性作证与一般作证。但不管何种类型的出庭作证,其对案件事实的证明方式、证明作用都是一样的,具有应然的平等性。但是,专家证人相比其他证人、司法鉴定人员、办案警察和检查人员,他对于案件事实的了解程度最浅,距离案件事实最远。他们只是就案件事实中的某一专业性问题提出自己的意见,且多是就固定证据存在的专业知识疑问或者不同的看法进行释疑,甚至个别问题并不涉及案件事实本身。因此主张在平等性的基础上,对上述出庭作证人员做不同层次区分,然后设置相应的出庭作证规则。

(5) 范思力:《刑事审判中专家辅助人出庭若干问题研究》,《西南政法大学学报》,2012年第5期。

围绕三个问题展开分析 1.专家辅助人的资格认定问题 2. 专家辅助人出庭是否适用《刑事诉讼法》中回避规定的问题 3. 专家辅助人出庭故意做虚假陈述的问题。文章笔者在实务中支持其出庭。也提到司法机关在进一步重视庭前准备工作的同时,也要积极为专家辅助人出庭创造便利条件。

(6) 王戬: 《"专家"参与诉讼问题研究》,《华东政法大学学报》,2012 年第5期。

就法律规定的"有专门知识的人"这一定义,一些地方法规明确其为专家证人这一现象,笔者认为理解为"专家辅助人"更为合理。另外建议专家辅助人应具有独立的诉讼地位诉讼参与人:应增列"辅助人.有专门知识的人出庭发表的意见不具有证据属性,其主要功用在于为法官心证形成和排除合理怀疑提供逻辑链接和路径支持。辅助裁判者了解专门的技术问题,对鉴定过程进行见证,来审查判断鉴定意见。

### 5总结

在这些法律研究中可以发现,专家证人制度在美国法律体系下已经有较为完善的发展,形成了一个包括先决条件——专家证人标准——指定程序——专家证人证言排除的较为完整的体系,且同时适用于民事以及刑事诉讼。在司法判例上也有非常多的实践。但是由于美国专家证人制度规定的原则性较强,具体司法程

序中专家证人证言的可接受性往往因为要证明的内容的不同存在较大分歧。而在中国,我国成文法对于专家辅助人的规定仍需要细化。就目前现状来看,在绝大多数的刑事诉讼案件中,"有专门知识的人"多数作为鉴定人的诉讼身份参与案件,由公诉机关聘请,对伤势或是犯罪引起的事故现场损害情况进行鉴定。但个别有因为特殊案件的需要,犯罪分子是使用现代高科技技术犯罪,因此相关领域专家是作为参与侦破案件的技术人员参与。还有是由被告人因对控诉的鉴定不服,聘请专家对于鉴定结论作出意见来为被控方辩护。就目前司法实践现状来看,这类鉴定意见对辩护起到效果较小,很难为法院所采纳。因此专家辅助人的资格以及在诉讼过程中的地位会严重影响案件的判决。我国应该细化各类不同案件中专家辅助人所处的地位以及所做鉴定的结果在诉讼地位中的效力。